

THE COLORADO METHOD TECHNIQUE (NON CAPITAL APPLICATION)

The conventional thinking of lawyers as they approach the jury selection process is that the purpose of voir dire is to educate and change the minds of jurors.

The Colorado Method is based on the notion that that conventional thinking is categorically wrong !! The Colorado Method operates on the premise that the sole purpose of voir dire is to get rid of impaired jurors. Essentially Colorado Method voir dire it is a process not of “selection” but of “deselection.”

Colorado voir dire is based solely on the facts and theory of your case and not on some sort of attempt to profile the panel in order to find appropriate jurors. Colorado Method attorneys deselect jurors based on the answers the jurors provide to the specially tuned questions you ask – the so-called “can opener” questions. A “can opener” question is one which forces the jury to confront the most obviously harmful factual elements of your case. Then, using the answers you receive to the “can opener,” you tie the answer to a constitutional-level juror impairment. (Some obvious constitutional-level impairments are: burden of proof, the right not to testify, and the presumption of innocence.)

The task is to pose one or two questions and use the answers to those questions as the entire basis of empanelment or removal.

The key to success then is developing the right “can opener question” for your case.

Here is a summary of the steps employed by attorneys conducting Colorado Method voir dire.

Step 1: Develop your can opener question.

Start by looking at your theory of defense and identifying the biggest problem (worst facts) that you face in trying to sell the theory to the jury.

As: what does the jury have to believe or wrestle with in order to accept your defense?

Example:

In the case you have been provided for this conference, the worst fact presented is that your 50 year old male client is accused of having mutual, repeated oral sex with a juvenile male victim between the ages of 10-14. Your obvious concern (fear) is that jurors will not believe that any 14 year old boy would ever wrongfully allege this factual scenario.

Here’s a possible can opener:

Does anyone really believe that an adolescent boy would ever come into court and say that he was giving and receiving oral sex from a 50 year old man unless it was true?

This can opener question goes to the heart of a juror’s willingness to accept the presumption of innocence (which is the constitutional dimension involved.)

Remember: Your task is to tie a question involving the worst fact into a constitutional level juror impairment.

Step 2: Pay specific attention to setting tone of this part of the proceedings. (Remember, people often know what the “right” answer to give is, even if they don’t believe it.) In whatever fashion is most comfortable for you spend a small amount of time letting jury know what is important about this process.

The proper approach is to reassure the juror that “all that is important is what you [the juror] think. All opinions are valued and no one should change their mind based on anyone else’s answer.”

Step 3: Pose your can opener.

What you are hoping for is for everyone in the courtroom to show hands against your theory.

David Wymore, who developed the Colorado Method, calls this “running to the bumper !!” In a voir dire it usually amounts to something like: “Be honest enough to tell me how you really feel [about this horrible fact or scenario].”

Step 4: Wade in to the jury pool and go fishing for impaired jurors. Listen to what they say – and remember it!

What you are searching for at this step are answers that light the way to challenges for cause.

Once the juror provides the telling answer – or challenges your premise – you will mirror back to the juror what he/she just said. Repeat the answer back to the juror verbatim. The purpose of this mirroring action is to pin the juror down without any possible ambiguity.

Once you have the unequivocal statement from the juror . . .

Step 5: Tie the impairment to the facts of the case using a short simple sentence.

Example:

“If you were sitting as a juror on a case where ____ [insert can opener] ____ you would feel ____ [insert bias] ____.”

This is the point in the voir dire process where you switch from open-ended to a gentle, more closed question technique.

Assuming you get the juror to acknowledge the impairment you move to:

Step 6: Affirm the answer with the juror to give him/her a sense of confidence and appreciation. (Wymore calls this “patting the bunny.”) This strengthens the juror and gets the juror ready to withstand attempts by the prosecution to rehabilitate them. (You are looking to infuse the juror with the attitude that “This is my point of view, I’m proud of it and I don’t care if you don’t like it.”)

Examples:

* Reassure the jury that this is what the system is all about: telling The Man the way you really feel instead of just what you think The Man wants to hear.

* Inform the jury that each individual juror is respected and no one should try to get you to get any juror to change his/her mind.

* "I bet everyone has the same point of view as you do."

* "Who else feels the same as juror no. 3?" (This allows you to move to the next candidate.)

Then, once you have finished your bunny-patting you . . .

Step 7: Close the case. Lock the jurors in as much as you can, getting them to hold tight to their point of view even as the prosecution and the judge try to get them to change their minds.

Example:

"Imagine a conversation about the [can opener] with the person you hold in highest esteem. Would you change your mind just because this person tells you you're wrong?"

Ideally you will have a juror who will say: "No." But sometimes you will only get part way. The juror will only make a partial concession and will say something like: "Well, if I did it would only be gradually and over time . . ."

In such case your response is:

"But you don't know me, or judge, or prosecutor – so you're not going to allow them to change your mind just because they tell you to do so."

Once you identify the impairment, lock in.

The Colorado Method approach allows you to get the horror of your case out there so it begins to lose some of its sting. It also helps identify which jurors are best candidates for using peremptory challenges.

Final note: If you have a case involving multiple different incidents you should analyze it carefully. It may support the use of same can opener. You should identify, if possible, a unifying theory. Ask questions like: does guilty on once count necessarily imply guilt on all?